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No. 00-1751

IN THE SUPREME COURT OF THE UNITED STATES

SUSAN TAVE ZELMAN, Superintendent of Public Instruction, *et al.*,
Petitioners,

v.

DORIS SIMMONS-HARRIS, *et al.*,
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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INTEREST OF THE *AMICI*

The *amici* States are bound by their own constitutions to provide for the education of their children and have a fundamental interest in assuring the quality of their children's education.[1] The *amici* States have a direct interest in this case because the Sixth Circuit's decision not only invalidates an important component of educational program opportunities now available to the States, but inhibits the ability of the States to develop other meaningful and innovative programs which address the complex problems of their educational systems and meet the contemporary educational needs of their children.

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[1] Each State constitution makes specific provision for education. *See* Ala. Const. Art 14,§256, Alaska. Const. Art 17,§1, Ariz. Const. Art 11,§8, Ark. Const. Art 14,§1, Cal. Const. Art 9,§1, Colo. Const. Art 9,§2, Conn. Const. Art 8,§1, Del. Const. Art 10,§1, Fla. Const. Art 9,§1, Ga. Const. Art 8,§1, Haw. Const. Art 11,§1, Idaho Const. Art 9,§4, Ill. Const. Art 10,§1, Ind. Const. Art 8,§1, Iowa Const. Art 9,§1, Kan. Const. Art 6,§1, Ky. Const. Art 6,§1, La. Const. Art 8,§1, Me. Const. Art 8,§1, Md. Const. Art 8,§1, Mass. Const. Pt. 2,C5,§2, Mich. Const. Art 8,§1, Minn. Const. Art 13,§1, Miss. Const. Art 8,§201, Mo. Const. Art 9,§1a, Mont. Const. Art 10,§1, Neb. Const. Art 7,§1, Nev. Const. Art 11,§1, N.H. Const. Pt.2, Art 83, N.J. Const. Art 8,§4, N.M. Const. Art 12,§1, N.Y. Const. Art 11,§1, N.C. Const. Art 9,§1, N.D. Const. Art 8,§1, Ohio Const. Art 6,§2, Okla. Const. Art 13,§1, Or. Art 8,§2, Pa. Const. Art 3,§4, R.I. Const. Art 1,§12, S.C. Const. Art 11,§3, S.D. Const. Art 8,§1, Tenn. Const. Art 11,§12, Tex. Const. Art 1,§1, Utah Const. Art 10,§1, Vt. Const. Ch.11, §1, Va. Const. Art 8,§1, Wash. Const. Art 9,§1, W.Va. Const. Art 12,§2, Wis. Const. Art 10,§1, Wyo. Const. Art 1,§23.

SUMMARY OF THE ARGUMENT

The Sixth Circuit, in a divided panel decision, held that the Ohio Pilot Project Scholarship Program violated the Establishment Clause because the Program had the primary effect of advancing and endorsing religion. In reaching this decision the panel majority failed to consider and properly apply the recent Establishment Clause jurisprudence of this Court. Moreover, the panel majority mistakenly relied on an earlier and distinguishable decision of this Court and failed to recognize that the Ohio Program comports with the constitutional criteria of neutrality required by this Court in resolving Establishment Clause challenges.

Conflict with Decisions of the Court. The Sixth Circuit decision conflicts with the recent Establishment Clause jurisprudence of *Mitchell v. Helms*, 530 U.S. 793 (2000), and *Agostini v. Felton*, 521 U.S. 203 (1997), where this Court carefully delineated the appropriate criteria for reviewing constitutional challenges to state educational programs which may provide state aid to private schools. The Sixth Circuit's decision mistakenly relies on the Court's earlier opinion in *Commission for Public Education and Religious Liberty v. Nyquist*, 413 U.S. 756 (1973) where the Court found that state funds that directly pay for maintenance and repair of private schools, both religious and nonreligious, as well as state grants, tuition reimbursement, and income tax benefits to parents of children attending New York nonpublic schools violated the Establishment Clause. *Nyquist* is distinguishable from the Ohio Program both factually and legally. In addition, the Sixth

Circuit's decision does not properly apply the criteria prescribed in *Mitchell,* specifically that the validity of a state educational program under the Establishment Clause is determined by whether funds for education are allocated to a sectarian institution through a *private choice* made through participation in a *neutral program*. *Mitchell v. Helms*, 530 U.S. 793, 794 (2000).

Conflict with State Courts of Last Resort. The Sixth Circuit's decision conflicts with decisions[2] of other State courts of last resort:

- *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998) (school choice program allowing use of state monies for private school education did not violate state or federal constitutional establishment of religion provision.)

- *Kotterman v. Killian*, 972 P.2d 606 (Ariz. 1999) (tax credit for parents whose children attended private schools did not violate the Establishment Clause.)

- *Simmons-Harris v. Goff*, 711 N.E.2d 203, (Ohio 1999) (concluding in dicta that the original Ohio Program did not violate the Establishment Clause.)

Need to Resolve the Conflicts. This case presents an

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[2] *See also Bush v. Holmes*, 767 So. 2d 668 (Fla. 1st DCA 2000) (holding that the Florida Opportunity Scholarship Program complies with state constitutional provisions for a uniform system of public education and remanding for consideration of Establishment Clause challenge.), *rev. denied*. __ So. 2d. __ (Fla. 2001).

important federal question which needs to be resolved because it impacts the ability of the States to develop innovative educational programs to provide for the education of their children. In our federalist system it is important that the States be permitted to meet educational challenges with innovative and meaningful solutions. In addition to Ohio, other states, including Florida, continue to develop programs which extend educational opportunities to their children in nonpublic school settings. The States need to be able to enact constitutionally valid programs with the assurance that they comply with criteria enunciated by this Court. Otherwise, the continued threat of invalidation of such programs by federal courts undermines the educational stability of the children enrolled in these programs and further exacerbates the problems the programs were enacted to solve.

The Court should grant Ohio's Petition and resolve this important federal issue.

ARGUMENT

The federal challenge in this case was instituted after the 1999 re-enactment of the Ohio Pilot Project Scholarship Program. The Program was initially enacted in 1995 following an order by the United States District Court mandating that the Cleveland school district be placed under state management.[3] The Ohio General Assembly implemented the school choice program to address a crisis in the public school system of Cleveland. The program was designed to award scholarships on a preferential basis to low-income families whose children would otherwise be consigned to attend failing public schools.

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[3] Brief of State Appellants at 2, *Simmons-Harris v. Zelman, 234 F.3d 945 (6th Cir. 2000)(No. 00-3055,00-3060, 00-3063)*

The Program was initially challenged in state court. On May 27, 1999, the Ohio Supreme Court found that the statute implementing the Program violated the state constitution's single-subject requirement, but the Court stated that the Program did not violate the federal Establishment Clause. *Simmons-Harris v. Goff*, 711 N.E. 2d 203 (Ohio 1999).

The Ohio General Assembly then reenacted the Program, and the Respondents immediately thereafter instituted this action in federal court. On August 25, 1999, the federal district court entered a preliminary injunction enjoining the operation of the Program. *Simmons-Harris v. Zelman*, 54 F. Supp. 2d 725 (N.D. Ohio 1999). On October 19, 1999, an application for stay of the district court injunction was filed with this Court, which application was granted on November 5, 1999. *Zelman v. Simmons-Harris*, 528 U.S. 983 (1999). On December 20, 1999, the district court entered summary judgment permanently enjoining the operation of the Program as violative of the Establishment Clause, but stayed the order pending Sixth Circuit review. *Simmons-Harris v. Zelman*, 72 F. Supp. 2d 834, 865 (N.D. Ohio 1999). Timely appeal was filed in the Sixth Circuit Court of Appeals which, in a divided panel decision, affirmed the district court. *Simmons-Harris v. Zelman*, 234 F.3d 945 (6th Cir. 2000).

I. THE SIXTH CIRCUIT'S DECISION FAILS TO CONSIDER THE RECENT ESTABLISHMENT CLAUSE JURISPRUDENCE OF THIS COURT AND IS IN CONFLICT WITH *MITCHELL V. HELMS* AND *AGOSTINI V. FELTON.*

This Court has always regarded neutral treatment of religious and nonreligious students alike as the centerpiece of its school-aid Establishment Clause jurisprudence. For a brief time

in the 1970's, in a series of three cases, *Committee for Public Education & Religious Liberty v. Nyquist*, 413 U.S. 756 (1973), *Meek v. Pittenger*, 421 U.S. 349 (1975), and *Wolman v. Walter*, 433 U.S. 229 (1977), the Court struck down several school-aid measures on the premise that aid to the school as a whole impermissibly advances the school's religious mission. That was the closest this Court has ever come to adopting a "no-aid" principle applicable to religiously affiliated schools; however, times have changed and so has this Court's approach to Establishment Clause adjudication. Since then this Court has retreated from that premise and cast doubt on any continuing viability of those 1970's cases in a whole range of later cases, beginning with *Committee for Public Education and Religious Liberty v. Regan*, 444 U.S. 646 (1980), and culminating in *Agostini v. Felton*, 521 U.S. 203 (1997) and *Mitchell v. Helms*, 530 U.S. 793 (2000).

In its recent Establishment Clause jurisprudence, this Court has carefully delineated the appropriate criteria to be considered in resolving challenges asserted under the Establishment Clause to state educational programs that may provide aid to private schools. Last term in *Mitchell v. Helms*, 530 U.S. 793 (2000), this Court rejected an Establishment Clause challenge to a Louisiana program which channeled federal funds for educational materials and equipment to parochial schools. The Court reaffirmed the application of the relevant *Lemon* criteria enunciated in *Agostini v. Felton*, 519 U.S. 203 (1997) for determination of Establishment Clause challenges: 1) whether the program has a secular purpose; and 2) whether the program has the primary effect of advancing or inhibiting religion.

In *Mitchell*, Justice Thomas, in the plurality opinion, focused on the neutrality of the program. The plurality found that there is no Establishment Clause violation when educational

aid is allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and is made equally available to both secular and religious beneficiaries on a nondiscriminatory basis. *See Mitchell*, 530 U.S. at 809. Justice O'Connor, in her concurring opinion, recognized that neutrality, while primary to the Establishment Clause analysis, is one of several factors to consider. *See id.* at 839. Clearly, however, both the plurality and the concurrence expressed continued adherence to the modified framework set out in *Agostini*. Ultimately, the plurality found that the Louisiana program determined eligibility for aid neutrally, without regard for the religious affiliations, or lack thereof, of the schools. Finally, the Court found that aid was based on the private choices of the parents and students as to which schools to attend.

These same principles of neutrality are equally applicable to the Ohio Pilot Project Scholarship Program. Eligibility for schools in the Program is not dependent on religious affiliations, or lack thereof, and participation is determined by the schools themselves. Recipients of the scholarships make their own independent and private choices regarding both participation in the Program and choice of schools. Participating schools must admit students on a nondiscriminatory basis in accordance with the rules of the State Superintendent. The scholarships are payable to the parents to be used at the participating school selected by them. Clearly, the Ohio Program has been crafted in accordance with the criteria of this Court to have a neutral effect on religion.

The panel majority of the Sixth Circuit, however, instead of following the Court's carefully modified criteria which was applied in *Mitchell* and *Agostini*, chose to go back to the Court's earlier decision in *Committee for Public Education and Religious Liberty v. Nyquist,* 413 U.S. 756 (1973), and

mistakenly construed that decision as controlling. As pointed out in Judge Ryan's dissent in the panel opinion, even if the *Nyquist* Establishment Clause analysis remains viable after 27 years and several decisions of this Court, the New York program invalidated in *Nyquist* is distinguishable in all essential respects both legally and factually from the Ohio Pilot Project Scholarship Program.

First, the continued viability of the *Nyquist* analysis is questionable. As Justice O'Connor stated in her concurring opinion in *Mitchell,* "We also concluded in *Agostini*, however, that the specific criteria used to determine whether government aid has an impermissible effect had *changed*." (emphasis supplied) 521 U.S. at 223. Accordingly, the panel majority's overriding reliance on *Nyquist*, and their failure to consider subsequent changes regarding the specific criteria to determine this issue, undermines their analysis. Second, *Nyquist* is clearly distinguishable. *Nyquist* involved a New York educational assistance program the stated purpose of which was to provide direct aid to both religious and nonreligious private schools because their closing would force public schools to absorb their students. The aid involved direct grants of state funds for building maintenance and repair, tuition reimbursement for some low-income parents whose children were already attending private schools, and tax relief for parents of students already attending private schools who were otherwise ineligible for tuition reimbursement.

The Court has expressly recognized that government aid that assists religious schools is not per se invalid. In *Agostini* the Court upheld a City of New York program which allowed public school teachers to provide remedial education in parochial schools. The Court recognized that there cannot be an absolute severance between church and religion and that bringing a public school teacher into a parochial school is not

an unequivocal merger of church and State. 521 U.S. at 221. In deciding this case the court modified the *Lemon* test,[4] to define an Establishment Clause violation as one in which the practice 1) results in government indoctrination, 2) defines its recipients by religion, and 3) creates excessive entanglement. 521 U.S. at 234. The third prong is not at issue in this case.

As it did in *Agostini* and *Mitchell*, this Court again confronts the question whether a generally available, religiously neutral program of wholly secular governmental benefits violates the Establishment Clause because a portion of the benefits aid children attending religious schools. The answer to that question, *amici* submits, is that it does not. The key to that answer is this Court's repeated and consistent declaration "that government programs that neutrally provide benefits to a broad class of citizens defined without reference to religion are not readily subject to an Establishment Clause challenge because sectarian institutions may also receive an attenuated financial benefit." *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 8 (1993). In contrast with these clearly enunciated principles, the decision of the Sixth Circuit stands in stark conflict with recent Establishment Clause jurisprudence of the Court.

II. THE SIXTH CIRCUIT DECISION IS IN CONFLICT WITH DECISIONS OF STATE COURTS OF LAST RESORT.

Courts in Wisconsin, Arizona, and Ohio have examined the issue of school choice and upheld the constitutionality of these States' programs. In *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998), the Wisconsin Supreme Court held that the Milwaukee Parental Choice Program allowing use of state

[4] *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

monies for private school education did not violate state or federal constitutional establishment of religion provisions. In the Milwaukee program, as in the Ohio program *sub judice*, there are no restrictions once a scholarship is awarded as to choice of school. Both programs allocate money directly to the parents for endorsement to the *school of their choice*.[5] In Wisconsin, as in Ohio, the choice of institution is limited only by registration in the program. All schools within a specified geographical area, private or public, secular or sectarian, that comply with secular education standards as well as anti-discrimination, health and safety standards are eligible.[6] Thus, the Ohio program facially meets the same constitutional standards for religious neutrality and private choice that were upheld by the Wisconsin Supreme Court and should be adjudged in the same fashion.

The Arizona Supreme Court in *Kotterman v. Killian*, 972 P.2d 606 (Ariz. 1999) held that a tax credit for parents who sent their children to private schools was not a violation of the Establishment Clause. In *Killian*, the court found that the program's *primary purpose* was to provide education for children, a valid secular goal. Although not specifically a scholarship case, the Establishment Clause reasoning underlying the Arizona program is clearly analogous to that underlying the Ohio program. Both programs had a facially apparent secular purpose evident in the statute governing the program. In the Arizona case, the program was one designed to expand educational options by "mak[ing] quality education available to

[5] Wis. Stat. §119.23 (1993) provides that the "superintendent shall pay to the parent or guardian of each pupil enrolled in a private school..." and Ohio Stat. § 3313.979 provides that "each scholarship...to be used for payments to a registered private school...is payable to the parents of the student."

[6] Wis. Stat. §119.23 and Ohio Stat. § 3313.976.

all children within the state." *Id.* at 611. In the Ohio case, the program was designed to promote educational availability regardless of socioeconomic status. The court in Arizona viewed Arizona's program as serving a valid secular purpose not in contravention with the Establishment Clause[7] and the legislative purpose behind Ohio's statute is clearly in agreement.

In the antecedent case in Ohio, *Simmons-Harris v. Goff*, 711 N.E.2d 203 (Ohio 1999), the Ohio Supreme Court held the voucher statute invalid on procedural grounds. In dicta, however, the court commented that the program did not violate the Establishment Clause except as to a provision giving scholarship priority to students whose parents belonged to a specific religious group. *Id.* at 210. This provision, however, the court asserted was severable thus not rendering the entire program invalid on Establishment Clause grounds.[8] The Ohio legislature removed that statutory language in the 1999 re-enactment and in so doing has removed any previous issue in Establishment Clause controversy and rendered the Ohio legislation analogous to that upheld in Wisconsin and Arizona.

Pending litigation in Florida presents these same questions. In 1999, the Florida Legislature enacted the Florida Opportunity Scholarship Program which provides scholarships

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[7] The Arizona court cited *Mueller v. Allen*, 463 U.S. 388, 395 (1983) asserting that "a state's decision to defray the cost of educational expenses incurred by parents *regardless of the type of schools ...attend[ed] evidences a purpose that is both secular and understandable.*" (emphasis added)

[8] The Ohio court determined that the provision allowing discriminatory selection was not so intertwined with the scope of the statute "as to make it impossible to give effect to the apparent intention of the Legislature if...stricken out." 711 N.E.2d at 210.

to students attending failing schools. *See* Ch. 99-398, Laws of Fla. The constitutionality of the Florida Program was challenged on both state and federal grounds. *See Bush v. Holmes*, 767 So. 2d 668 (Fla. 1st DCA 2000), *rev. denied* ___ So. 2d ___ (Fla. 2001). While the Florida Opportunity Scholarship Program withstood a state constitutional challenge, the federal Establishment Clause challenge is currently pending on remand to the trial court.

III. THIS CASE PRESENTS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH THE COURT SHOULD DECIDE SO THAT STATES MAY DEVELOP AND ENACT VALID LEGISLATION WHICH MEETS THEIR RESPONSIBILITIES TO PROVIDE A QUALITY EDUCATION TO THEIR CHILDREN.

Congress acknowledges and "...reaffirms that the responsibility for control of education is reserved to the States and local school systems and other instrumentalities of the States..." *See* 20 U.S.C. § 5899(b) (2000). Moreover, the States each have their own separate constitutional responsibilities to provide for the education of their children. *See* note 1 *supra*. In order to meet these responsibilities the States must overcome a wide array of complex and challenging problems including poor academic performance, student discipline, teacher shortages, fiscal instability, and cultural distinctions[9], as well as complying with judicial oversight.[10]

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[9] *See* Department of Education, *Education Reforms and Students at Risk* , available at http://www.ed.gov/pubs/EdReformStudies/EdReforms; Education Week on the Web, *The Urban Challenge*, (Jan.8, 1998), *at* http://www.edweek.org/sreports/QC98.

[10] *See e.g., Anderson ex rel. Anderson v. Canton Mun. Separate Sch. Dist.*, 232 F.3d 450 (5th Cir. 2000); *Jenkins v. Missouri*, 216 F.3d 720, 733 (8th Cir. 2000); Kelly Thompson Cochran, *Beyond School Financing:*

Development of innovative and meaningful educational programs is essential to the States' role in meeting these challenges and providing a quality education to their children.

In our federalist system the States should, in the absence of a clear constitutional violation, be encouraged to develop innovative solutions to such complex problems and "...try novel social and economic experiments..." *Santosky v. Kramer*, 455 U.S. 745, 773 (1982) (quoting *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J. dissenting)). In Florida, as in other states, there is an ongoing legislative effort to develop new and meaningful educational programs which meet the changing needs of children in contemporary society by affording educational opportunities in nontraditional, including nonpublic, settings.

Despite a massive investment of public and private resources, little progress has been made toward delivering successful educational opportunities to certain populations of children, and the vast majority of the children served by the most inadequate public schools lack the financial resources to exit the system. Some help is available through programs offering private funding, but this is not the panacea for the public school system. In Florida, for example, the Children's Scholarship Fund in Miami and Tampa Bay supports a total of eight hundred children with average scholarships of $1,000 per child. Children First America in Central Florida supports ninety children and the Miami Inner City Angels provide funds for forty children. Statewide these organizations and others provide an average scholarship amount of $1,639 for a total outlay of

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$2,180,000 in private funding.[11]

In Florida, as in other states, there is an ongoing effort to develop new and meaningful educational programs to meet these children's needs. Florida is the first state to enact statewide voucher programs. The 1999 Opportunity Scholarship Program (§ 229.0537, Fla. Stat.), which was passed as part of a broader package of public education reforms emphasizing standards and accountability (Chapter 99-398, Laws of Florida), allows children in failing public schools either to attend higher performing public schools or to attend participating private schools at state expense. Under that program, 58 children assigned to two failing Pensacola elementary schools have received scholarships to attend private schools and another 78 students are using the program to go to better public schools.

Florida has initiated programs dedicated to students with disabilities as well. The 2001 John McKay Scholarships for Students with Disabilities Program (§ 229.05371, Fla. Stat., Ch. 2001-82, Laws of Fla.) started in 1999 as a pilot program and is now available statewide for public school students with disabilities for whom an individual education plan has been written whose parent is dissatisfied with the student's progress. Nine hundred and eighty students were able to take advantage of this program last year and that number is expected to reach 2,000-3,000 for the next school year.[12] These statistics clearly demonstrate that a need exists for the flexibility inherent in a variety of school choice programs. Additionally, the 2001 Florida Legislature created a corporate income tax credit for

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[11] Patrick J. Heffernan, Ph.D., President, Floridians for School Choice *at* http://www.floridachild.org.

[12] *See generally* http://www.opportunityschools.org outlining the programs available in Florida.

corporations that wish to make monetary donations to nonprofit scholarship funding organizations established to provide scholarships to students from families that meet the income eligibility guidelines for free or reduced price lunch meals under the National School Lunch Act. H.B. 21, Fla. Leg. (2001) (awaiting signature by the Governor).

Although it is too early to assess the effect of these new programs on students choosing to attend new schools, it is already clear that the 1999 Opportunity Scholarship Program is spurring badly needed efforts to improve student performance in Florida's public schools.[13] Many public schools lengthened the school year, provided after school and Saturday tutorials, and devoted greater time to reading, writing, and mathematics. The school performance grades for the 2000-01 school year reflect that no school in the state has a failing grade.[14]

While the contours of the various States' school choice programs differ, they tend to share certain features: (1) funds are placed at the disposal of parents in the form of vouchers, scholarships, or tax credits; (2) private schools are added to the range of educational options; and (3) aid is targeted to students who are economically disadvantaged, disabled students whose parents are not satisfied with their progress, and/or students trapped in failing public schools.

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[13] *See e.g.*, Caroline Hoxby, *Choice Evidence*, WSJ, (Jun. 7, 2001), *at* http:// www.WSJ.com; Carol Innerst, *Competing to Win: How Florida's A+ Plan has Triggered Public School Reform*, (Apr. 2000), The Center for Education Reform *at http://www.edreform.com/school_choice/* compete. htm; Jay P. Greene, *An Evaluation of the Florida A+ Accountability and School Choice Program, (Feb. 2001)*, Manhattan Institute for Policy Research *at* http://www.manhattan-institute. org/html/cr_aplus.htm.

[14] Florida Department of Education 2000-2001 School Accountability Report *at* http://www.firn.edu/doe/schoolgrades.

These programs hold promise both for enhancing the quality of education received by the children who exercise alternative options and for stimulating public school reform that benefits all the other children. The demand for educational options is overwhelming.[15] Today, millions of children are consigned to public schools that are not providing them with a good education.[16] Fortunately, school choice programs are giving thousands of children the opportunity to receive a better education and are forcing systemic public school reform. *Amici* ask this Court to take care not to displace the children in these existing programs and not to jeopardize the potential for other efforts so that more of our children have access to enhanced educational options.

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[15] Florida has a myriad of education resources in addition to the OSP and Scholarships for Children with Disabilities. Bright Futures Scholarships, Charter Schools, and College Reach-out Programs are just a sample of the variety available in Florida and these programs demonstrate how flexible options can work to provide education for all students. *See* http://www.floridachild.org.

[16] Education Week on the Web provides an interesting statistical analysis of factors affecting education in urban America including, but not limited to, family history, financial status, teacher qualifications, and class size. *See* http://www.edweek.org/sreports/qc98/challenges/tables/ta-n.htm.

CONCLUSION

Continued federal constitutional challenges to the validity of innovative state educational programs and the uncertainties resulting from conflicting Establishment Clause jurisprudence undermine the stability of the educational progress of children participating in such programs. The *amici* States urge the Court to grant Ohio's Petition and resolve this important federal issue.

Respectfully submitted,

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